IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9416 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL NISHABEN KANTIBHAI - Petitioner(s)
Versus
THE SUPERINTENDENT & 1 - Respondent(s)

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Appearance :
MS RASHMI JOHARI for MR RAJESH K SHAH for Petitioner(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2.
MR SUNIL C PATEL for Respondent(s) : 1 - 2.
MR HARIN P RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 12/04/2007

ORAL JUDGMENT

1. **RULE**. Learned advocate Mr. Sunil Patel waives service of rule on behalf of the respondents. At the

request of the learned advocates for the respective parties, the matter is taken up for final hearing today itself.

2. The petitioner is a lady who has obtained divorce as per the customs prevailing in her community. She was married to one Patel Vipulbhai Arvindbhai on 27th December, 1997. She thereafter applied for the passport to the respondents which was issued on 17th April, 1998, which is to expire on 16th April, 2008. On the strength of the said passport, she went with her husband to Kenya. However, since the relations between the couple got strained, they decided to have divorce in accordance with the customs prevailing in Patel community to which they belonged. They executed Deed of Divorce on 17th May, 2002. The petitioner thereafter returned to her native place with a child. She now intends to obtain immigration visa in her maiden name and for that purpose, she approached the respondents for carrying out necessary corrections in her name in the passport. However, the passport authority i.e., respondent no. 1 insisted that she should produce Divorce Deed authenticated by the Court. Hence, this petition.

3. Mr. Rashmi Johari learned advocate for the

petitioner has submitted that in the petitioner's community customary divorce is permissible and she has obtained divorce in accordance with the customs. Hence, the document produced by her, which is duly notarized, is valid to prove divorce and to enable the respondent authorities to carry out necessary corrections in her name in the passport. She wants correction to be made in accordance with the school leaving certificate wherein her name is shown Patel Nishaben Kantibhai. She has further submitted that the learned Single Judge of this Court in identical circumstances has laid down that the passport authority cannot insists upon production of Divorce Deed authenticated by the Court and in view of the same, according to her, the respondent authority cannot ask her to produce such authenticated deed before carrying out correction. Mr. Sunil Patel has not controverted the submissions made by Ms. Johari in view of the judgment of this Court.

4. Having considered the rival submissions and having perused the averments made in the petition, it appears that there is no dispute with regard to the fact that the petitioner has obtained divorce in accordance with the customs prevailing in her community. It is also clear that the Divorce Deed is not authenticated by the

Court. However, there is decision of the learned Single Judge of this Court which is rendered in the case of **Twinkle Rameshkumar Dhameliya v. Superintendent reported in (2005) 9 GHJ pg. 39** wherein it has been held as under :-

> “5. It appears that the instructions issued in the passport manual as such proceed on the basis that the divorce deed is required to be authenticated by the court in all cases. Had it been the case of seeking divorce or for a divorce through court, there may be the order of the competent court. It is admitted position that the petitioner and her first husband Chandulal Kanani both are Hindus and belonging to Patel Community. Section 29(2) of the Hindu Marriage Act, 1955 provides that "Nothing contained in the Hindu Marriage Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of Hindu Marriage Act." Therefore, if the customary divorce is permissible for dissolution of Hindu marriage the same as such is saved even as per the provisions of Hindu Marriage Act. There is no challenge to the divorce deed itself on the ground that the customary divorce in Hindu Patel community is not permissible. The only aspect objected is that such divorce deed must be authenticated by the court. Therefore, even if the divorce deed is entered into between the husband and the wife where customary divorce is permissible, it can not be said that in all cases such divorce deed can not be recognised as the proof divorce or dissolution of Hindu Marriage between wife and the husband unless so authenticated by the court. If the passport officer insists for authenticated divorce deed through the court in all cases of divorce, then in that case, the effect of section 29(2) of Hindu Marriage Act for saving the customary divorce shall stand nullified. If any dispute is raised by any person contending that such customary divorce is not permissible or

> dissolution of Hindu Marriage as per customary divorce is not based on any custom prevailing in the community it may stand on different footing, but in the absence of such dispute, it can not be said that in all cases wherever there is s divorce or dissolution of marriage such deed must be authenticated by the court and in the absence thereof same can not be accepted by the passport authority. At the most, with a view to ascertain the existence of any dispute or otherwise pertaining to the dissolution of Hindu Marriage as per custom prevailing in the community, the passport officer may insist for giving a public advertisement in the newspaper inviting objections by any person before accepting the dissolution of marriage as valid. He may also insist for the affidavits of two elders of the community who have signed as witnesses for such divorce deed. If any objection is raised by any person to such dissolution of marriage, then possibly the passport officer may be justified in insisting for authentication of divorce deed by the court, but, if no objections are raised in response to the public notice and if the affidavits of two elders of the community who have signed the divorce deed as witnesses are produced, the same can be said as sufficient proof for accepting the divorce deed for the purpose of issuance of passport leaving aside the other aspects which may arise between the parties to the divorce deed. Even otherwise also the registration of such divorce deed before Sub Registrar is not compulsory and therefore not to accept the divorce unless registered before Sub Registrar can not be said as proper in view of the present facts and circumstances and the observations made earlier."

4.1. After observing the aforesaid, the learned Judge gave the following direction:

> "8. In view of the above discussion, the communication of the respondent passport authority insisting for production of divorce deed duly registered by the Sub Registrar or authenticated by the court is quashed and set aside with the direction to the passport

authority to consider the application of the petitioner in the light of the observations made by this court hereinabove.

It is clarified that as observed earlier in this judgment, the passport authority may insist for public notice in respect of divorce deed for dissolution of marriage between the petitioner and Chandulal Kanani and may also insist for the affidavits of two elders of the community who are the signatories for the divorce deed and if no objection is filed by any person in response to the public notice the passport officer shall accept the divorce deed for dissolution of marriage between the petitioner and Chandulal Kanani as legal and valid and thereafter if the marriage registration certificate is produced by the petitioner for her marriage with Rameshkumar Jadavbhai Dhameliya, the passport officer shall issue passport to the petitioner after examining the other aspects in accordance with law but as if she is the wife of Rameshkumar Jadavbhai Dhameliya. The aforesaid exercise we shall be completed as early as possible preferably within a period of two months from the receipt of writ of this court.

It is made clear that in any case if any objections are filed in response to public notice pertaining to divorce deed, it would be open to the passport officer to insist for authenticated divorce deed from the competent court before issuing the passport."

5. In view of the aforesaid, this petition deserves to be allowed. The passport authority i.e., respondent no. 1 is directed to accept the Divorce Deed for dissolution of marriage of the petitioner and after examining every aspects in accordance with the law shall issue passport to the petitioner, after carrying out

necessary correction in the name of the petitioner on the basis of the school leaving certificate that may be produced by her before the authority. In the process, the respondent is at liberty to ask the petitioner to have public notice if it is so required.

5.1. Since this exercise is required to be carried out at the instance of the petitioner, she is directed to pay costs of Rs.2,500=00 to the respondent.

6. With the aforesaid directions, the petition is allowed. Rule is made absolute.

[Akshay H. Mehta, J.]

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